

SUPPLEMENTARY GENERAL CONDITIONS

DEPARTMENT OF ADMINISTRATION

STATE OF MONTANA

The Supplementary General Conditions contain changes to the AIA General Conditions. The following supplements modify, change, delete from or add to the "General Conditions of the Contract for Construction," AIA Document A201, 1987 Edition. Where any article of the General Conditions is modified or any paragraph, sub-paragraph or clause thereof is modified or deleted by these Supplementary Conditions, the unaltered provisions of that article, paragraph, sub-paragraph or clause shall remain in effect.

Article 2 Owner:

2.1.2: Delete in its entirety

2.2.1: Delete in its entirety

2.2.2: Delete in its entirety

Article 3 Contractor:

3.3.1 Add the following:

the contractor will be required to: review any specified construction or installation procedure; advise the Architect/Engineer if the specified procedure deviates from good construction practice; to advise the Architect/Engineer if following the procedure will affect any warranties, including the Contractor's general warranty, or of any objections the Contractor may have to the procedure and to propose any alternative procedure which the Contractor will warrant.

3.4 Add the following sub-paragraphs:

3.4.3 In any contract let for state work, the Contractor shall give preference to the employment of bona fide Montana residents in the performance of the work and shall pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions in effect and applicable to the county or locality in which the work is being performed (18-2-403, MCA).

On any state construction project funded by state or federal funds, except a project

partially funded with federal aid money from the United States Department of Transportation or where residency preference laws are specifically prohibited by federal law and to which the state is a signatory to the construction contract, at least 50% of the work must be performed by bona fide Montana residents, as defined in 18-2-401, Montana Codes Annotated.

- .1 The Montana Commissioner of Labor and Industry has Established the Standard Prevailing Rate of Wages in accordance with 18-2-401 and 18-2-402, MCA; and a copy of which are bound herein.
 - .2 The Contractor shall classify all workers in the project in accordance with the special required contract provisions. In the event the Contractor is unable to classify a worker in accordance with these rates, he shall contact the Department of Labor and Industry, Labor Standards Division, Capitol Station, Helena, Montana 59620, for a determination of the prevailing wage rate to be paid that particular worker. The Contractor shall be responsible for obtaining wage rates for all workers in the project prior to their performing any work on the project
- 3.4.4 Products manufactured or produced in the State of Montana by Montana industry and labor shall be preferred for use in this project and in all materials, supplies and equipment procured if such products, materials, equipment and supplies are comparable in price and quality as prescribed in 18-1-112, MCA.
- 3.4.5 The Contractor is required to be registered with the Department of Labor & Industry under 39-9-201 and 39-9-204 MCA PRIOR to the Contract being executed by the State of Montana. A bidder must demonstrate that it has registered or promises that it will register immediately upon notice of award. If the prevailing bidder cannot or does not register in time for the Owner to execute the Contract within the fifteen (15) day time period of the notice of award the State may award to next lowest responsible bidder who meets this requirement. The Owner cannot execute a contract for construction nor issue a Notice To Proceed to a Contractor who is not registered (39-9-401(a) MCA).
- 3.5.1: Add the following:
- The Contractor shall and does hereby warrant and/or guarantee all work for a period of one year from date of substantial completion, or as otherwise specified in the contract documents.
- 3.12.5: Delete the following from the paragraph found in the first sentence: with reasonable promptness and in such sequence. Add the following in its place: within thirty (30) calendar days of being issued the Notice To Proceed.

Article 4 Administration of the Contract:

4.1: Add the following:

Define Consultant as Architect or Engineer.

4.1.3: Delete the following portion of the paragraph:
Architect/Engineer against whom the Contractor makes no reasonable objection.

4.3.3: Delete the following portion of the paragraph: or within 21 days after the claimant first recognizes the condition giving rise to the claim, whichever is later.

4.3.3: Add the following: if the Contractor wishes to reserve its rights under this paragraph, written notice of any event that may give rise to a claim must be given within 21 days of the event, whether or not any impact in money or time has been determined.

4.5.1: Add the following to the fifth line after the words "American Arbitration Association":
and or those rules specified or agreed upon in the contract documents.

4.5.2: Delete the following portion of paragraph next to the last line: with the American Arbitration Association; add the following: with an agreed arbitrator.

4.5.5: Delete in its entirety.

Article 5 Subcontractors:

5.3: Add the following sub-paragraph:

5.3.3 In compliance with state statutes, Contractors will have 1% withheld from all payments due. Each "Public Contractor" which includes all Sub-contractors with contracts greater than \$5,000 each, shall include 1% in their bid to the Contractor. The Contractor will withhold said 1% from payments made to his Subcontractors.

Article 7 Changes in Work:

7.2 Add the following sub-paragraph:

7.2.3 The cost or credit to the Owner resulting from a change in the work shall be determined as follows:

.1 By actual cost as shown by the Contractor's invoices, plus 5% allowance for overhead, plus 10% allowance for profit.

.2 Cost shall be limited to the following: cost of materials, including cost of delivery; cost of labor, including social security, old age and unemployment insurance and fringe

benefits under collective bargaining agreements; workers' compensation insurance; bond premiums; and rental value of power tools and equipment.

Article 8 Time:

8.1.2 Add the following:

Delete the word "Agreement" and add "Notice to Proceed."

8.1 Add the following sub-paragraphs:

8.1.5 Liquidated damages:

The Owner may suffer loss if the project is not substantially complete on the date set forth in the contract documents. The Contractor and his surety shall be liable for and shall pay to the Owner the sums hereinafter stipulated as liquidated damages for each calendar day of delay until the work is substantially complete:

[AMOUNT] AND NO/100 DOLLARS (\$.00)

8.1.6 Provided that the Contractor shall not be charged liquidated damages of any excess cost when delay in completion of the work is due to:

- .1 Any preference, priority or allocation order issued by the government.
- .2 Unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God or of the public enemy, acts of the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather.
- .3 Any delays of Sub-Contractors or suppliers occasioned by any of the causes specified in .1 and .2 of this article.

8.1.7 Provided further that the Contractor shall within ten days from the beginning of such delay, notify the Owner in writing of the causes of the delay.

8.1.8 All work shall be "substantially complete" within [NUMBER ()] consecutive calendar days after the date on a written "Notice to Proceed" from the Owner.

Article 9 Payments and Completion:

9.3 Applications for payment; add the following sub-paragraph:

- 9.3.4 Until the work is 50% complete, the Owner will pay 90% of the amount due the Contractor on account of progress payments. At the time the work is 50% complete and thereafter, if the manner of completion of the work and its progress are and remain satisfactory to the Architect/Engineer, the Architect/Engineer will, on presentation by the contractor of Consent of Surety and with the approval of the Owner, authorize any remaining partial payments to be paid in full.
- .1 The full contract retainage may be reinstated if the manner of completion of the work and its progress do not remain satisfactory to the Architect/Engineer, or if the Surety withholds or revokes its consent, or for other good and sufficient reasons.
- .2 Prior to the first application for payment, the Contractor shall submit the following information on the appropriate forms:
- a. Schedule of Amounts for Contract Payment (Form 100): This form shall contain a breakdown of the labor, material and other costs associated with the various portions of the work and shall be the basis for the progress payments to the Contractor.
 - b. Project/Progress Schedule: The Contractor shall prepare a progress schedule in a form that is acceptable to both the Architect/Engineer and the Owner. The Schedule shall show the estimated progress of the entire project through the individual time periods allowed for completion of each discipline/phase including, but not limited to, time for submittals, earthwork, foundations, structural, mechanical, electrical, insulation, interior finishes, etc. For Projects with construction costs of \$250,000 and greater, the Project Schedule shall be in the Critical Path Method (CPM).
- .3 Progress Payments
- a. Periodic Estimates for Partial Payment shall be on a form provided by the Owner (Form 101) and submitted to the Architect/Engineer for payment by the Owner. Payment shall be requested for the labor and material incorporated in the work to date and for materials suitably stored, less the aggregate of previous payments and the retainage.
 - b. The Contractor, by submission of any partial pay request, certifies that every claim for partial payment is correct, true and just in all respects and that payment or credit had not previously been received. The contractor further warrants and certifies, by submission of any partial pay request, that all previous work for which payment has been received is free and clear of all liens, claims, security interests or encumbrances in favor of the Contractor, subcontractors, material suppliers or other persons or entities and does release the Owner from such.

- c. Progress payments do not constitute official acceptance of any portion of the work.
 - d. In compliance with 15-50-206 MCA, the Contractor will have 1% of his gross receipts withheld by the Owner from all payments due. Each subcontractor who preforms work greater than \$5,000, shall have 1% of its gross receipts withheld by the Contractor. The Contractor shall notify the Department of Revenue on the department's prescribed forms.
- .4 The Contractor may submit obligations/securities in a form specified in 18-1-301 Montana Code Annotated (MCA) to be held by a Financial Institution in lieu of retainage by the Owner. The Owner will establish the amount which would otherwise be held as retainage. Should the Contractor choose to submit obligations/securities in lieu of retainage, the Contractor shall be required to execute the Owner's ACCOUNT AGREEMENT FOR DEPOSIT OF OBLIGATIONS OTHER THAN RETAINAGE (Form 120) prior to submission of any obligations/securities.
- .5 Each and every Periodic Estimate for Partial Payment shall be accompanied by a revised/updated Schedule showing progress to date and project work. Minor Schedule changes may be shown as markups to the previously submitted Schedule. Major changes must be shown by a revised Schedule indicating what actions are anticipated to get the work completed by the contractual completion date. *If no Schedule (or revised Schedule) is provided the Architect/Engineer and/or Owner may return the pay request, or hold it, and will not pay for any portion of the Work until the appropriate Schedule, indicating all changes, revisions and updates, is provided.*

9.7 Failure of Payment:

9.7.1 Delete the following portion of the paragraph: within seven days after receipt of the Contractor's application for payment.

9.10.2 Add the following:

Final payment shall not be due until the Contractor has furnished an Affidavit on Behalf of Contractor executed on Montana State Form No. 106.

Article 11 Insurance and Bonds:

Delete Article 11 in its entirety and replace with the following:

11.1 Insurance, General: the Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the

performance of the work by the Contractor, its agents, employees, representatives, assigns, or subcontractors.

- 11.2 Hold Harmless and Indemnification: the Contractor agrees to protect, defend, and save the state, its elected and appointed officials, agents, and employees harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor, its agents, employees or any third parties on account of bodily or personal injuries, death, or damage to property arising out of services or work performed or omissions or work or in any way resulting from the acts, negligent or otherwise, or omissions of the contractor, its agents, employees, assigns, and/or subcontractors under this contract.
- 11.3 Contractor's Insurance: **insurance required under all sections herein shall be in affect for the duration of the contract which extends through the warranty period.** Insurance required herein shall be provided by insurance policies issued only by insurance companies currently authorized to do business in the state of Montana. No Contractor or Sub-contractor shall commence work under this contract until all required insurance has been obtained. During the term of this contract, the Contractor shall, not less than thirty days prior to the expiration date of any policy for which a certificate of insurance is required, deliver to the Owner a certificate of insurance with respect to the renewal insurance policy. The Contractor shall furnish one copy of insurance certificates of insurance herein required, which shall specifically set forth evidence of all coverage required by these contract documents and which shall be signed by authorized representatives of the insurance company or companies evidencing that insurance as required herein is in force and will not be canceled, limited or restricted without thirty days' written notice by certified mail to the contractor and the Owner. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits. Additionally, all certificates shall include the project name and A/E project number.
- 11.3.1 The Contractor shall carry **Workers' Compensation Insurance**. Such Workers' Compensation Insurance shall protect the Contractor from claims made by his own employees, the employees of any Sub-contractor, and also claims made by anyone directly or indirectly employed by the Contractor or Sub-contractor. The Contractor shall require each Sub-contractor similarly to provide Workers' Compensation Insurance.
- 11.3.2 .1 Each Contractor shall carry occupancy coverage **Commercial General Liability Insurance** including coverage for premises; operations; independent contractor's protective; products and completed operations; products and materials stored off-site; broad form property damage and comprehensive automobile liability insurance with not less than the following limits of liability:

\$1,000,000 per occurrence; aggregate limit of \$2,000,000

The **Commercial General and Automobile Liability Insurance** shall provide coverage for both bodily injury, including accidental death and property damage which may arise out of the work under this contract, or operations incidental thereto, whether such work and operations be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by the Contractor or by Sub-contractor, or by anyone for whose acts any of them may be liable. The Contractor shall maintain completed operations liability insurance required herein for a period of not less than one year after final payment or anytime the Contractor goes on to the location of the project.

- .2 The Contractor's liability insurance policies shall list the STATE OF MONTANA as an additional insured. The STATE OF MONTANA includes its officers, elected and appointed officials, employees and volunteers and political subdivisions thereof. Should the Contractor not be able list the state as an additional insured, the Contractor shall purchase a per occurrence Owner's/Contractor's Protective Policy (OCP) with the STATE OF MONTANA as the insured party in the same occurrence and aggregate limits as that indicated above for the Contractor's Commercial General Liability Policy.
 - .3 Property damage liability insurance shall be written without any exclusion for injury to or destruction of any building, structure, wires, conduits, pipes, or other property above or below the surface of the ground arising out of the blasting, explosion, pile driving, excavation, filling, grading or from the moving, shoring, underpinning, raising, or demolition of any building or structure or structural support thereof.
 - .4 The Contractor's insurance coverage shall be PRIMARY insurance as respects the state, its officers, elected and appointed officials, employees and volunteers. Any insurance or self-insurance maintained by the state, its officers, elected and appointed officials, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute to it.
- 11.3.3 **Property Insurance (All Risk):** the Contractor shall purchase and maintain Builder's Risk/Installation insurance on a 'special causes of loss form' ("all risk") upon the entire work, including vandalism and malicious mischief and theft of material stored off-site, on-site or in transit, currently authorized at the site to the full insurable value thereof. Such insurance shall be in a company or companies authorized to do business in the state of Montana. This insurance shall include the interests of the Owner, the Contractor, Sub-contractors and sub-subcontractors in the work and shall include "All Risk" Insurance for physical loss or damage including, without duplication of coverage, fire, leakage, steam boilers, pressure vessels, oil or gasoline tanks, theft, vandalism and malicious mischief, and other such risks. If not covered under all risk insurance or otherwise provided in the contract documents, the Contractor shall effect and maintain similar property insurance on portions of the work, products or materials stored off the site or in transit when such

portions of the work are to be included in an application for payment under sub-paragraph 9.3.2. Additionally, all certificates shall include the project name and A/E project number.

- .1 The form of policy for this coverage shall be “completed value of the work” for all new structures and “cost of the work for all renovations” of existing structures.
- .2 If by the terms of this insurance any mandatory deductibles are required, the Contractor shall be responsible for payment of the amount of all deductibles in the event of a paid claim.

Article 12 Uncovering and Correction of Work:

12.2 Correction of work

12.2.2 Add the following:

- .1 Each Contractor shall remedy any defects due to faulty materials or workmanship and pay for any damage to other work resulting therefrom, which shall appear within a period the period of Substantial Completion through one (1) year from the date of Final Completion as it occurs in each building and/or facility and in accordance with the terms of any special guarantees provided in the contract. The Owner shall give notice of observed defects with reasonable promptness. All questions arising under this Article shall be decided by the Architect/Engineer.
- .2 The Contractor shall respond within seven (7) days after notice of observed defects has been given and he shall proceed to immediately remedy these defects.
- .3 Should the Contractor fail to respond to the notice or not remedy those defects, the Owner shall have this work corrected at the expense of the Contractor.
- .4 The warranty period shall be defined as commencing with Substantial Completion of the project and continuing for one (1) year from the date of Final Completion.

Article 13 Successors and Assigns:

13.2.1 After the words..... Consent of others, the sentence should read as follows:

In the event of assignment, the assignor shall nevertheless remain legally responsible.

13.8 Add the following paragraph:

Payrolls and basic records pertaining to the project shall be kept on a generally recognized accounting basis and shall be available to the Owner, Legislative Auditor, the Legislative

Fiscal Analyst or his authorized representative at mutually convenient times. Accounting records shall be kept by the contractor for a period of three years after completion and acceptance of the project by the Owner.

Article 14 Termination or Suspension of the Contract:

14.1 Termination by the Contractor.

14.1.1 Delete 14.1.1.5 In its entirety.

Add the following Article

Article 15 Equal Opportunity:

15.1 The Contractor shall maintain policies of employment as follows:

The Contractor and all Sub-contractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin or age. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, national origin or age. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

15.1.2 The Contractor and all Sub-contractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.